Supreme Court of the United States.

No. 423.—October Term, 1902.

Isabella F. Blackstone, Individually and as Executrix of the last Will and Testament of Timothy B. Blackstone, deceased, Plaintiff in Error,
vs.
Nathan L. Miller, Comptroller of the State of New York, and Edward M. Grout, Comptroller of the City of New York.

In error to the Surrogates' Court of New York County, State of New York.

[January 26, 1903.]

Mr. Justice Holmes delivered the opinion of the Court.

This a writ of error to the Surrogates Court of the county of New York. It is brought to review a decree of the court, sustained by the Appellate Division of the Supreme Court, 69 App. Div. 127, and by the Court of Appeals, N. Y. , levying a tax on the transfer by will of certain property of Timothy B. Blackstone, the testator, who died domiciled in Illinois. The property consisted of a debt of $10,692.24, due to the deceased by a firm, and of the net sum of $4,843,456.72, held on a deposit account by the United States Trust Company of New York. The objection was taken seasonably upon the record that the transfer of this property could not be taxed in New York consistently with the Constitution of the United States.

The deposit in question represented the proceeds of railroad stock sold to a syndicate and handed to the Trust Company, which, by arrangement with the testator, held the proceeds subject to his order, paying interest in the meantime. Five days' notice of withdrawal was required, and if a draft was made upon the company, it gave its check upon one of its banks of deposit. The fund had been held in this way from March 31, 1899, until the testator's death on May 26, 1900. It is probable, of course, that he did not intend to leave the fund there forever and that he was looking out for investments, but he had not found them when he died. The tax is levied under a statute imposing a tax "upon the transfer of any property, real or personal. . . . 2. When the transfer is by will or intestate law, of property within the State, and the decedent was a non-resident of the State at the time of his death." L. 1896, c. 908, § 220, amended, L. 1897, c. 284, 3 Rev. Stat. &c., 3d ed., 1901, p. 3592. The whole succession has been taxed in Illinois, the New York deposit being included in the appraisal of the estate. It is objected to the New York tax that

the property was not within the State, and that the courts of New York had no jurisdiction; that if the property was within the State it was only transitorily there, *Hays* v. *Pacific Mail Steamship Co.*, 17 How. 596, 599, 600, that the tax impairs the obligation of contracts, that it denies full faith and credit to the judgment taxing the inheritance in Illinois, that it deprives the executrix and legatees of privileges and immunities of citizens of the State of New York, and that it is contrary to the Fourteenth Amendment.

In view of the State decisions it must be assumed that the New York statute is intended to reach the transfer of this property if it can be reached. *New Orleans* v. *Stempel*, 175 U. S. 309, 316; *Morley* v. *Lake Shore & Michigan Southern Ry. Co.*, 146 U. S. 162, 166. We also must take it to have been found that the property was not *in transitu* in such a sense as to withdraw it from the power of the State, if otherwise the right to tax the transfer belonged to the State. The property was delayed within the jurisdiction of New York an indefinite time, which had lasted for more than a year, so that this finding at least was justified. *Kelley* v. *Rhoads*, present term. Both parties agree with the plain words of the law that the tax is a tax upon the transfer, not upon the deposit, and we need spend no time upon that. Therefore the naked question is whether the State has a right to tax the transfer of such deposit by will.

The answer is somewhat obscured by the superficial fact that New York, like most other States, recognizes the law of the domicil as the law determining the right of universal succession. The domicil, naturally, must control a succession of that kind. Universal succession is the artificial continuance of the person of a deceased by an executor, heir, or the like, so far as succession to rights and obligations is concerned. It is a fiction, the historical origin of which is familiar to scholars, and it is this fiction that gives whatever meaning it has to the saying *mobilia sequuntur personam*. But being a fiction it is not allowed to obscure the facts, when the facts become important. To a considerable, although more or less varying, extent the succession determined by the law of the domicil is recognized in other jurisdictions. But it hardly needs illustration to show that the recognition is limited by the policy of the local law. Ancillary administrators pay the local debts before turning over the residue to be distributed, or distributing it themselves, according to the rules of the domicil. The title of the principal administrator, or of a foreign assignee in bankruptcy, another type of universal succession, is admitted in but a limited way or not at all. See *Crapo* v. *Kelly*, 16 Wall. 610; *Chipman* v. *Manufacturers' National Bank*, 156 Mass. 147, 148, 149.

To come closer to the point, no one doubts that succession to a tangible chattel may be taxed wherever the property is found, and none the less that the law of the *situs* accepts its rules of succession from the law of the

domicil, or that by the law of the domicil the chattel is part of a *universitas* and is taken into account again in the succession tax there. *Eidman* v. *Martinez*, 184 U. S. 578, 586, 587, 592. See *Mager* v. *Grima*, 8 How. 490, 493; *Coe* v. *Errol*, 116 U. S. 517, 524; *Pullman's Palace Car Co.* v. *Pennsylvania*, 141 U. S. 18, 22; *Magoun* v. *Illinois Trust & Savings Bank*, 170 U. S. 283; *New Orleans* v. *Stempel*, 175 U. S. 309; *Bristol* v. *Washington County*, 177 U. S. 133; and for State decisions *Matter of Estate of Romaine*, 127 N. Y. 80; *Callahan* v. *Woodbridge*, 171 Mass. 595; *Greves* v. *Shaw*, 173 Mass. 205; *Allen* v. *National State Bank*, 92 Md. 509.

No doubt this power on the part of two States to tax on different and more or less inconsistent principles, leads to some hardship. It may be regretted, also, that one and the same State should be seen taxing on the one hand according to the fact of power, and on the other, at the same time, according to the fiction that, in successions after death, *mobilia sequuntur personam* and domicil governs the whole. But these inconsistencies infringe no rule of constitutional law. *Coe* v. *Errol*, 116 U. S. 517, 524; *Knowlton* v. *Moore*, 178 U. S. 41.

The question then is narrowed to whether a distinction is to be taken between tangible chattels and the deposit in this case. There is no doubt that courts in New York and elsewhere have been loath to recognize a distinction for taxing purposes between what commonly is called money in the bank and actual coin in the pocket. The practical similarity more or less has obliterated the legal difference. *Matter of Houdayer*, 150 N. Y. 37; *New Orleans* v. *Stempel*, 175 U. S. 309, 316; *City National Bank* v. *Charles Baker Co.*, 180 Mass. 40, 42. In view of these cases and the decision in the present case, which followed them, a not very successful attempt was made to show that by reason of the facts which we have mentioned, and others, the deposit here was unlike an ordinary deposit in a bank. We shall not stop to discuss this aspect of the case, because we prefer to decide it upon a broader view.

If the transfer of the deposit necessarily depends upon and involves the law of New York for its exercise, or, in other words, if the transfer is subject to the power of the State of New York, then New York may subject the transfer to a tax. *United States* v. *Perkins*, 163 U. S. 625, 628, 629; *McCullough* v. *Maryland*, 4 Wheat. 316, 429. But it is plain that the transfer does depend upon the law of New York, not because of any theoretical speculation concerning the whereabouts of the debt, but because of the practical fact of its power over the person of the debtor. The principle has been recognized by this court with regard to garnishments of a domestic debtor of an absent defendant. *Chicago, Rock Island & Pacific Ry. Co.* v. *Sturm*, 174 U. S. 710. See *Wyman* v. *Halstead*, 109 U. S. 654. What gives the debt validity? Nothing but the fact that the law of the place where the debtor is will make him pay. It does not matter that the

law would not need to be invoked in the particular case. Most of us do not commit crimes, yet we nevertheless are subject to the criminal law, and it affords one of the motives for our conduct. So again, what enables any other than the very creditor in proper person to collect the debt? The law of the same place. To test it, suppose that New York should turn back the current of legislation and extend to debts the rule still applied to slander that *actio personalis moritur cum persona*, and should provide that all debts hereafter contracted in New York and payable there should be extinguished by the death of either party. Leaving constitutional considerations on one side, it is plain that the right of the foreign creditor would be gone.

Power over the person of the debtor confers jurisdiction, we repeat. And this being so we perceive no better reason for denying the right of New York to impose a succession tax on debts owed by its citizens than upon tangible chattels found within the State at the time of the death. The maxim *mobilia sequuntur personam* has no more truth in the one case than in the other. When logic and the policy of a State conflict with a fiction due to historical tradition, the fiction must give way.

There is no conflict between our views and the point decided in the case reported under the name of *State Tax on Foreign-held Bonds*, 15 Wall. 300. The taxation in that case was on the interest on bonds held out of State. Bonds and negotiable instruments are more than merely evidences of debt. The debt is inseparable from the paper which declares and constitutes it, by a tradition which comes down from more archaic conditions. *Bacon* v. *Hooker*, 177 Mass. 335, 337. Therefore, considering only the place of the property, it was held that bonds held out of the State could not be reached. The decision has been cut down to its precise point by later cases. *Savings & Loan Society* v. *Multnomah County*, 169 U. S. 421, 428; *New Orleans* v. *Stempel*, 175 U. S. 309, 319, 320.

In the case at bar the law imposing the tax was in force before the deposit was made, and did not impair the obligation of the contract, if a tax otherwise lawful ever can be said to have that effect. *Pinney* v. *Nelson*, 183 U. S. 144, 147. The fact that two States, dealing each with its own law of succession, both of which the plaintiff in error has to invoke for her rights, have taxed the right which they respectively confer, gives no cause for complaint on constitutional grounds. *Coe* v. *Errol*, 116 U. S. 517, 524; *Knowlton* v. *Moore*, 118 U. S. 53. The universal succession is taxed in one State, the singular succession is taxed in another. The plaintiff has to make out her right under both in order to get the money. See *Adams* v. *Batchelder*, 173 Mass. 258. The same considerations answer the argument that due faith and credit are not given to the judgment in Illinois.—The tax does not deprive the plaintiff in error of any of the privileges and immunities of the citizens of New York. It is no such deprivation that if

she had lived in New York the tax on the transfer of the deposit would have been part of the tax on the inheritance as a whole. See *Mager* v. *Grima*, 8 How. 490; *Brown* v. *Houston*, 114 U. S. 622, 635; *Wallace* v. *Mayers*, 38 Fed. Rep. 184. It does not violate the Fourteenth Amendment. See *Magoun* v. *Illinois Trust & Savings Bank*, 170 U. S. 283. Matters of State procedure and the correctness of the New York decree or judgment, apart from specific constitutional objections, are not open here. As we have said, the question whether the property was to be regarded as *in transitu*, if material, must be regarded as found against the plaintiff in error.

Decree affirmed.

Mr. Justice WHITE dissents.

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Test:

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